

In the Matter of the Accusation of THE
CALIFORNIA CORPORATIONS
COMMISSIONER,

VS.

Respondent.

Case No.: 100-2323; 100-2324; 100-2325

ACCUSATION IN SUPPORT OF LICENSE
REVOCATION

CITATIONS; DESIST AND REFRAIN
ORDER

ORDER VOIDING TRANSACTIONS AND
DISGORGEMENT OF ALL CHARGES AND
EXCESS FEES

The Complainant is informed and believes, and based upon such information and belief, alleges and charges Respondent as follows:

I

INTRODUCTION

On December 31, 2004, the Commissioner of the Department of Corporations (“Commissioner”) issued Respondent, Sami Nafsoosi, doing business as S&D Cash Advance Payday

1 Financial Management (“S&D Financial Management”) three separate deferred deposit transaction
2 originator licenses for three locations (File No. 100-2323; 100-2324; 100-2325) pursuant to the
3 California Deferred Deposit Transaction Law (“CDDTL”), which is set forth in California Financial
4 Code sections 23000 *et seq.* (All future references are to Financial Code sections unless indicated
5 otherwise.)

6 On July 17, 2007, Respondent S&D Cash Advance Payday Financial Management, a
7 California corporation, provided the Department of Corporations a copy of the fictitious name filings,
8 and requested that it be licensed as “S&D Financial Management.” The owner of S&D Financial
9 Management is Sami Nafsoosi. Respondent operated from three principal places of business:

- 10 - 1506 Barton Road, Redlands, CA 92373;
- 11 - 331 E. 9th Street, Suite 2, San Bernardino, CA 92410;
- 12 - 34477 Yucaipa Boulevard, Yucaipa, CA 92399.

13 Respondent surrendered his license (#100-2325) on June 7, 2005 at which time he closed his store in
14 Yucaipa, CA.

15 By reason of Respondent S&D Financial Management’s numerous and continuing violations
16 of the CDDTL, the Commissioner seeks an order to revoke the deferred deposit transaction originator
17 licenses of Respondent pursuant to Financial Code section 23052.

18 II

19 FACTUAL BACKGROUND

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21 1. The Department is mandated to enforce all provisions of the CDDTL. S&D Financial
22 Management has engaged in violations of the CDDTL as set forth below.

23 2. Since at least 2005, S&D Financial Management has engaged in the business of deferred
24 deposit transactions by offering, originating and making deferred deposit transactions as described
25 below.

26 3. A deferred deposit transaction is a written transaction whereby one person gives funds to
27 another person upon receipt of a personal check and it is agreed that the personal check shall not be
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1 deposited until a later date. These loans are sometimes referred to as “payday advances” or “payday
2 loans.”

3 4. In December 2004, Respondent filed with the Department an application for a license to
4 make deferred deposit transactions and included a Declaration, designated as “Exhibit K” to the
5 application, and signed under penalty of perjury by its owner, Sami Nafsoosi, stating:

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7 **I (we) have obtained and read copies of the California Deferred Deposit Transaction**
8 **Law (Division 10 of the California Financial Code) and the Rules (Chapter 3, Title**
9 **10, California Code of Regulations) and am familiar with their content; and,**

10 **I (we) agree to comply with all of the provision of the California Deferred Deposit**
11 **Transaction Law, including any rules or orders of the Commissioner of**
12 **Corporations.**

13 Respondent’s Declaration to the application also states that “by signing this declaration,” “the
14 applicant hereby agrees (or attests) or declares their understanding of the following items listed
15 below:

- 16 1. That the applicant will submit to periodic examinations by the Commissioner
17 of Corporations as required by the California Deferred Deposit Transaction
18 Law.
- 19 2. That the applicant will keep and maintain all records for 2 years following the
20 last entry on a deferred deposit transaction and will enable an examiner to
21 review the record keeping and reconcile each consumer deferred deposit
22 transaction with documentation maintained in the consumer’s file records.
- 23 3. That the applicant understands the examination process involving the
24 reconciliation of records will be facilitated if the applicant maintains, at a
25 minimum, a ledger or listing of the following current and updated information
26 for each deferred deposit transaction (as specified in Financial Code Section
27 23035): customer’s name and address, account number, check number,
28 amount provided, fee, amount of check, corresponding annual percentage rate
(e.g. 14-day or 30-day), and the deferred due date.
4. That the applicant will maintain a file of all advertising for a period of 90 days
from the date of its use, which will be available to the Commissioner of
Corporations upon request.

5. That the applicant will file with the Commissioner of Corporations an Amendment to this application prior to any material change in the information contained in the application for licensure, including, without limitation, the plan of operation.
6. That the applicant will file with the Commissioner of Corporations any report required by the Commissioner.
7. That the applicant hereby attests that the applicant (including officers, directors and principals) has not engaged in conduct that would be cause for denial of a license.

5. Respondent was required to and did complete another Declaration designated as "Exhibit L" to the application, which Mr. Nafoosi signed under penalty of perjury stating:

"The applicant will comply with all federal and state laws and regulations (including Division 10, commencing with Section 23000, of the Financial Code), if it offers, arranges, acts as an agent for, or assists a deferred deposit originator in the making of a deferred deposit transaction. (Financial Code Section 23037(i).)"

6. On December 27, 2004, a letter accompanied the Commissioner's issuance of a CDDTL license to Respondent, which informed Respondent of the following facts:

"[T]here are certain obligations and responsibilities that a licensee must comply with. The following information about a licensee's obligations and responsibilities regarding certain requirements of the California Deferred Deposit Transaction Law is provided for your reference.... [A] licensee should review and become familiar with all provisions of the law and the rules and regulations....

5. A licensee is subject to statutory books and record requirements. Each licensee shall keep and use books, accounts, and records that will enable the Commissioner to determine if the licensee is complying with the provisions of the California Deferred Deposit Transaction Law and with the rules and regulations promulgated by the Commissioner.... (Financial Code Section 23024.)"

7. Notwithstanding knowledge regarding the licensure requirements, Respondent willfully and knowingly engaged in multiple CDDTL violations outlined below. The Department examiner's review of S&D Financial Management revealed multiple violations of the CDDTL warranting citations, issuance of a desist and refrain order, the voiding of deferred deposit transactions, disgorgement of all excess charges and fees, and revocation of the license.

III

CALIFORNIA DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS

On or about July 26, 2006, the Commissioner commenced a regulatory examination of the books and records of Respondent S&D Financial Management (Redlands location – 100-2323). The examination revealed numerous violations of California Financial Code section 23036(a) by Sami Nafosi doing business as S&D Financial Management. During the regulatory examination, a Department of Corporations examiner, acting on behalf of the Commissioner, discovered that Respondent charged fees in excess of 15% of the face amount of the check in violation of California Financial Code section 23036(a).

A regulatory letter was sent by the Department on August 22, 2006 showing multiple violations of various sections of the California Financial Code. This letter included the names of five consumers to show detailed examples of the violations, and required S&D Financial Management to respond “within thirty (30) calendar days” and to issue refunds “to all customers from all locations the excess fees charged since 12/31/04.” On September 22, 2006, Nafosi responded with a letter showing that refunds were made to the five consumers listed as “examples,” but failed to make refunds to any other consumers. Thus on November 16, 2006, Nafosi was advised by the examiner that the refunds made were not adequate and did not meet the requirements of the regulatory letter since the refunds were only made to the five consumers identified in the regulatory letter and did not include any other consumers or address violations at the other locations. Thereafter on November 27, 2006, Nafosi responded that he had made refunds to an additional 18 consumers. But the advance pay roster obtained during the examination (which detailed the names of the consumers, the amounts borrowed on a certain date, the amounts repaid at a certain date, the fee charged, and the bank name and check numbers) clearly indicated that many refunds to consumers were still owed. It should be noted that the advance pay roster only addressed the period from April 4, 2006 through July 27, 2006.

On December 22, 2006, the examiner advised Nafosi that the more recent refunds were still insufficient and emphasized the importance of diligently reviewing all records (advance pay rosters, ledgers and receipts) so that all appropriate refunds could be made. In March 2007, the licensee advised that he was unable to locate his pay roster back to December 31, 2004. It became clear that

1 he also failed to maintain books, accounts and records enabling the Commissioner to determine
2 compliance with the provisions of the California Financial Code for a period of two years as required
3 by section 23024.

4 In addition to the violations of California Financial Code 23036(a) at the Redlands location, a
5 December 18, 2006 regulatory examination revealed that while engaged in the business of deferred
6 deposit transactions, S&D Financial Management had charged additional fees to several customers at
7 the Yucaipa location for extending the due date of the loan in violation of section 23036(b). The
8 amounts of the extension fees charged ranged between \$15.00 and \$52.50 per transaction. S&D
9 Financial Management also charged more than \$15 for dishonored checks (non-sufficient funds) in
10 violation of section 23036(e), and charged other miscellaneous convenience fees in violation of
11 section 23036(f).

12 In regulatory letters dated August 22, 2006 and March 14, 2007, the Commissioner
13 requested that S&D Financial Management correct all violations discovered in the July 26, 2006 and
14 December 18, 2006 examinations. The August 22, 2006 regulatory letter provided the Respondent
15 with examples of violations occurring at the Redlands location including two transactions resulting in
16 the charge of excessive fees under section 23036(a) totaling \$292.50. The March 14, 2007 regulatory
17 letter provided the Respondent with additional examples of violations at the Yucaipa location
18 including two transactions resulting in the charge of excessive fees under section 23036(a) totaling
19 \$100.00, and two customers who had been charged unlawful extension fees in violation of 23036(b)
20 totaling \$67.50. The Respondent was again asked to "review all records and refund to all customers
21 of all licensed locations all inappropriate charges/fees since 12/31/04, as previously requested" in the
22 August 22, 2006 regulatory letter. S&D Financial Management was also instructed to "notify the
23 Department of the amount refunded, customer name, date of refund, and check number."

24 In letters dated September 22, 2006 and April 9, 2007, S&D Financial Management indicated
25 that corrective actions had been taken to address the deficiencies. The April 9, 2007 letter stated that
26 Respondent had "also made a review of all customers at all locations to discover if there are other
27 individuals that were overcharged, a copy of the refund checks are enclosed." Per that response,
28 licensee had made refunds to 77 customers in the amount of \$20,348.25 as follows:

- 1 - Yucaipa location: 18 customers in the amount of \$3899.50;
- 2 - San Bernardino location: 8 customers in the amount of \$1350.00;
- 3 - Redlands location: 51 customers in the amount of \$15,098.75.

4 As there were some excessive fees discovered after the first examination that still had not
5 been identified or refunded, Respondent was informed that the Commissioner would need to conduct
6 an expanded regulatory inspection at all three locations.

7 On September 24, 2007, the Commissioner began his re-examination of the Redlands
8 location. The Commissioner asked the Respondent to provide for inspection records of all deferred
9 deposit transactions executed since December 31, 2004. Sami Nafsoosi, the owner of S&D Financial
10 Management, was not present during this re-examination. He had instructed two employees to
11 provide the customer ledgers and other records requested by the Department which were previously
12 not provided at the initial examination on July 26, 2006. Information from December 31, 2004
13 through March 28, 2006 was still missing. However during this re-examination, the Commissioner
14 discovered that the Redlands location still owed an additional \$22,315.42 in refunds due to excess
15 fees having been charged on 749 deferred deposit transactions despite the August 22, 2006 regulatory
16 letter and the Respondent's prior self-audit attempt. Thus, the second examination revealed that the
17 Respondent had failed to make good faith efforts to conduct a complete review of all records
18 requested despite being provided self-correction opportunities by the Commissioner.

19 On October 1, 2007, a one-day examination of the San Bernardino location was conducted.
20 The Commissioner found that S&D Financial Management still needed to make refunds on 283
21 transactions totaling \$2733.71 for the period of July 20, 2006 to October 1, 2007. The examination
22 revealed that the licensee continued to charge excessive fees at the San Bernardino location even after
23 the Redlands location had been audited in July, 2006.

24 Because the Yucaipa location had been closed, a re-examination of the records from that
25 location was limited to those records and documents already obtained during the December 2006
26 examination. The Commissioner found that S&D Financial Management still needed to make
27 refunds to 78 consumers resulting from 133 transactions totaling \$7661.51 for the period of May 10,
28 2006 through December 18, 2006. It became clear that Yucaipa customers had been overcharged,

1 even though Sami Nafsoosi had written on November 26, 2006 that he had reviewed the San
2 Bernardino and Yucaipa accounts and did not find any evidence of overcharging.

3 The licensee also failed to timely comply with demands made pursuant to section 23046(a) to
4 provide records needed to determine the amounts of illegal fees and charges, and identify consumers
5 who were charged excessive fees. In spite of a subpoena issued by the Department on April 28, 2008
6 for all loan activity reports, customer ledgers, receipts, agreements and other customer records
7 retroactive to December 31, 2004, Nafsoosi failed to provide any loan activity reports, receipts or
8 agreements for the Redlands location from December 31, 2004 through March 28, 2006. For the San
9 Bernardino location, Nafsoosi failed to provide any loan activity reports or receipts for December 31,
10 2004 through July 19, 2006 and did not produce any agreements for the period of December 31, 2004
11 through March 2006. For the Yucaipa location, Nafsoosi failed to provide loan activity reports or
12 receipts for the periods of December 31, 2004 through May 9, 2006, September 30, 2006 through
13 October 26, 2006, and June 19, 2006 through June 30, 2007. Furthermore, no deferred deposit
14 agreements were produced for the periods of December 31, 2004 through March 2006, May 2006
15 through June 2006, August 2006 through October 2006, and June 2007. While some customer
16 ledgers were provided for these locations and periods, there is no way for the Department to ascertain
17 how many customers or agreements there were without a list of customers or a loan activity report.

18 On April 28, 2008, the Commissioner subpoenaed additional records from S&D Financial
19 Management due to its failure to produce them at the prior examinations. Although not all records
20 requested in the subpoena were received, the records did disclose an additional 378 deferred deposit
21 transactions totaling \$157,590.00 and \$9900.67 in additional excess fees charged at all three licensed
22 locations including customer fees that exceeded 15% of the face amount of the check and excessive
23 NSF fees.

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IV

**AUTHORITY SUPPORTING REVOCATION OF RESPONDENT'S
CALIFORNIA DEFERRED DEPOSIT TRANSACTION LICENSE**

California Financial Code section 23052 provides:

The commissioner may suspend or revoke any license, upon notice and reasonable opportunity to be heard, if the commissioner finds any of the following:

(a) The licensee has failed to comply with any demand, ruling, or requirement of the commissioner made pursuant to and within the authority of this division.

(b) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.

(c) A fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally.

The Commissioner finds that, by reason of the foregoing, the Respondent has violated Financial Code section 23036(a) by charging fees exceeding 15% of the face amount of the check, section 23036(b) by charging unauthorized deferred deposit transaction extension fees, section 23036(e) for charging fees in excess of fifteen dollars (\$15) for the return of a dishonored check, section 23024 for failing to maintain deferred deposit transaction records for two years, and section 23046(a) for failing to comply with demands by the Commissioner to provide records necessary to determine the amount of illegal fees and charges and identify consumers who were charged excessive fees. Based thereon, grounds exist for the Commissioner to revoke the deferred deposit transactions license of Respondent Sami Nafsoosi doing business as S&D Financial Management.

V

AUTHORITY TO ISSUE CITATIONS AND DESIST AND REFRAIN ORDER

California Financial Code section 23058, subdivision (a), authorizes the Commissioner to issue citations and provides:

If, upon inspection, examination or investigation, based upon a complaint or otherwise, the department has cause to believe that a person is engaged in the business of deferred deposit

1 transactions without a license, or a licensee or person is violating any provision of this
2 division or any rule or order thereunder, the department may issue a citation to that person in
3 writing, describing with particularity the basis of the citation. Each citation may contain an
4 order to desist and refrain and an assessment of an administrative penalty not to exceed two
thousand five hundred dollars (\$2,500). All penalties collected under this section shall be
deposited in the State Corporations Fund.

5 Additionally, the Commissioner is statutorily authorized to order any person or licensee to
6 desist and refrain from engaging in violations of the CDDTL. Financial Code section 23050
7 provides:

8 Whenever, in the opinion of the commissioner, any person is engaged in the business of
9 deferred deposit transactions, as defined in this division, without a license from the
10 commissioner, or any licensee is violating any provision of this division, the commissioner
11 may order that person or licensee to desist and to refrain from engaging in the business or
12 further violating this division. If within 30 days, after the order is served, a written request for
13 a hearing is filed and no hearing is held within 30 days thereafter, the order is rescinded.

14 VI

15 CITATIONS

16 During the re-examination which commenced on September 24, 2007, the Commissioner
17 identified 1,144 deferred deposit transactions in which S&D Financial Management charged
18 excessive fees totaling \$32,710.64 to customers in violation of Financial Code sections 23036(a),
19 23036(b), 23036(e) and 23036(f). (The violations of 23036(b), 23036(e) and 23036(f) were found
20 solely from records for the Yucaipa location – #100-2325). These violations remained uncorrected
21 by the Respondent despite being given opportunity to identify and refund these unauthorized fees
22 prior to the September 24, 2007 examination. Later after the issuance of a subpoena, the
23 Commissioner identified 379 additional deferred deposit transactions in which S&D Financial
24 Management charged excessive fees totaling \$9,900.67 to customers in violation of section 23036(a)
25 and section 23036(e). (Once again, the violations of 23036(e) were solely from the Yucaipa
location.)

26 The foregoing facts establish that S&D Financial Management has violated California
27 Financial Code sections 23036(a) by charging fees exceeding 15% of the face amount of the check,
28 23036(b) by charging unauthorized extension fees, 23036(e) by charging fees exceeding fifteen

1 dollars (\$15) for the return of a dishonored check, 23036(f) by charging convenience fees in excess of
2 the amounts authorized by the Financial Code, 23024 by failing to maintain deferred deposit
3 transaction records for a period of two years at three locations, and 23046(a) by failing to comply
4 with demands to provide records necessary to determine the amount of illegal fees and identify
5 customers which were charged with illegal fees at three locations. Thus the Commissioner is
6 statutorily authorized to issue the following Citations:

7 Citations 1 through 1523 - Since about December 31, 2004 through at least about September
8 25, 2007, S&D Financial Management has charged customers fees exceeding the amounts authorized
9 under the California Financial Code in connection with deferred deposit transactions in violation of
10 sections 23036(a), 23036(b), 23036(e) and 23036(f).

11 Citations 1524 through 1526 – S&D Financial Management failed to maintain deferred
12 deposit transaction records for two years at any of its three locations as required by California
13 Financial Code section 23024.

14 Citations 1527 through 1529 – S&D Financial Management failed to comply with demands to
15 provide records necessary to determine the amounts of illegal fees and charges and identify
16 consumers which were charged illegal fees at all three locations as required by California Financial
17 Code section 23046(a).

18 Pursuant to California Financial Code section 23058, S&D Financial Management is hereby
19 ordered to pay to the Commissioner a total of 1523 administrative penalties of \$100.00 each in the
20 amount of one-hundred fifty-two thousand and three-hundred dollars (\$152,300.00) plus an
21 additional six administrative penalties of \$2500.00 each in the amount of fifteen thousand dollars
22 (\$15,000.00) for the following Citations within 30 days from the date of these Citations:
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24 Citations 1 through 1523 – One hundred dollars (\$100) EACH, totaling \$152,300.00.
25 Citations 1524-1529 – Two thousand five hundred dollars (\$2500) EACH, totaling
26 \$15,000.00.

27 These Citations totaling \$167,300.00 shall remain in full force and effect until further order of
28 the Commissioner.

1 VII

2 **DESIST AND REFRAIN ORDER**

3 Based on the foregoing facts establishing multiple violations of the CDDTL by Respondent,
4 the issuance of a Desist and Refrain Order is necessary for the protection of consumers and is
5 consistent with the purposes, policies, and provisions of the CDDTL.

6 Pursuant to California Financial Code sections 23050 and 23058, Sami Nafsoosi doing
7 business as S&D Financial Management is hereby ordered to desist and refrain from violating
8 California Financial Code section 23036(a), 23036(b), 23036(e), 23036(f), 23024 and 23046(a).

9 This Order shall remain in full force and effect until further order of the Commissioner.
10

11 VIII

12 **AUTHORITY TO VOID CALIFORNIA DEFERRED DEPOSIT TRANSACTIONS**

13 California Financial Code section 23060, subdivision (a), states:

14 If any amount other than, or in excess of, the charges or fees permitted by this
15 division is willfully charged, contracted for, or received, a deferred deposit
16 transaction contract shall be void, and no person shall have any right to collect or
17 receive the principal amount provided in the deferred deposit transaction, any
18 charges, or fees in connection with the transaction.

19 IX

20 **ORDER VOIDING CALIFORNIA DEFERRED DEPOSIT TRANSACTIONS AND**
21 **DISGORGEMENT OF ALL CHARGES AND EXCESS FEES**

22 Respondent Sami Nafsoosi, dba S&D Financial Management willfully violated Financial Code
23 section 23036 by charging deferred transaction fees in excess of 15 percent of the face amount of the
24 check, charging extension fees, charging fees exceeding fifteen dollars (\$15) for the return of a
25 dishonored check and charging other miscellaneous convenience fees totaling \$42,611.31 in at least
26 1,523 transactions for loans in the amount of \$552,920.91. Respondent S&D Financial Management
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1 has no right to collect or receive any amount other than, or in excess of, the charges or fees permitted
2 by the CDDTL.

3 Sami Nafsoosi doing business as S&D Financial Management is hereby ordered to
4 immediately return to consumers the principal amount provided in the deferred deposit
5 transaction, plus any charges and fees received for the 1,523 deferred deposit transactions
6 described above. The transactions totaling at least \$552,920.91 are declared void.
7

8 **X**

9 **CONCLUSION AND PRAYER**

10 The Commissioner finds that, by reason of the foregoing, the Respondent has violated
11 California Financial Code sections 23036(a), 23036(b), 23036(e), 23036(f), 23024 and 23046(a), and
12 based thereon, grounds exist for the Commissioner to revoke the deferred deposit transactions license
13 of Respondent Sami Nafsoosi doing business as S&D Financial Management.

14 WHEREFORE, IT IS PRAYED that the deferred deposit transactions license of Sami Nafsoosi
15 doing business as S&D Financial Management be revoked.
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17
18 Dated: September 10, 2008
19 Sacramento, California

20 PRESTON DuFAUCHARD
21 California Corporations Commissioner

22 By _____
23 Alan S. Weinger
24 Acting Deputy Commissioner
25 Enforcement Division
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